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Exempt from fees per Gov't code 6103
To the benefit of the City of San Diego

6 Attorneys for Defendants
City of San Diego, Police Chief William Lansdowne; and Officer M. Czas

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 OCIE HENDERSON, the Administrator of the) Case No. 08cv1491 JLS (JMA)
Estate of RAMEL HENDERSON)
11 Plaintiffs,) DEFENDANTS CITY OF SAN DIEGO,
12 v.) POLICE CHIEF WILLIAM
13) LANSDOWNE AND OFFICER M. CZAS
14 CITY OF SAN DIEGO; POLICE CHIEF) ANSWER TO PLAINTIFFS'
15 WILLIAM LANSDOWN; POLICE OFFICER) COMPLAINT
16 M. CZAS and DOES 1 through 50, inclusive,)
all individually and in their official capacities, as)
agents or employees, of the CITY OF SAN)
17 DIEGO,)
18 Defendants.)

19 Defendants, City of San Diego and Police Chief William Lansdowne (erroneously named
20 William Lansdown), and Police Officer M. Czas, severing themselves from any other party,
21 answer Plaintiffs' Complaint for Damages, as follows:

J.

INTRODUCTORY STATEMENT

24 1. These answering Defendants admit that part of the allegations contained in
25 Paragraph 1 starting with "This" and ending with "(Does 1 through 50)", (page 2, line1- 4), and
26 paragraphs 2 and 4.

27 2. This answering Defendants deny the remainder of the allegations contained in
28 paragraph 1. However, Defendants admit Police Chief William Lansdowne is the supervisory

1 officer responsible for the conduct of defendants, and Defendant City of San Diego is the
2 employer of the police personnel who is sued.

3 3. These answering Defendants have insufficient information to admit or deny the
4 allegations contained in Paragraphs 3, and therefore, deny the same.

II.

PARTIES

7 4. These answering Defendants have insufficient information to admit or
8 deny the allegations contained in Paragraphs 5, 6, 7, 8, 13 and 15, and therefore, deny the same.

9 5. These answering Defendants admit the allegations contained in Paragraphs 9, 10,
10 11, 12, and 14 of the complaint, except as to all allegations concerning Does 1 through 50.

III

FACTS COMMON TO ALL COUNTS

13 6. In answering Paragraphs 16, and 22 of the complaint, defendants
14 have insufficient information to admit or deny the allegations and therefore deny the same.
15

16 7. The answering Defendants admit the allegations contained in
17 Paragraphs 17, 18, 21.

18 8. These answering Defendants deny the allegations contained in Paragraphs 19, 20,
19 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

IV

**FIRST CAUSE OF ACTION
(AGAINST ALL DEFENDANTS COGNIZABLE UNDER 42 U.S.C. § 1983)
EXCESSIVE FORCE**

23 9. In answer to Paragraph 36, these answering Defendants incorporate by reference
24 each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 35
25 of Plaintiff's Complaint.

26 10. These answering Defendants deny the allegations contained in Paragraphs 37, 38,
27 39, 40, 41, 43, 43, 44, 45, 46 and 47.

20

V.

**SECOND CAUSE OF ACTION
(AGAINST DEFENDANTS LANSDOWNE AND CITY OF SAN DIEGO)
FAILURE TO INSTRUCT, SUPERVISE, CONTROL, AND DISCIPLINE**

11. In answer to Paragraph 48, these answering Defendants incorporate by reference each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 47 of Plaintiff's Complaint.

12. These answering Defendants have insufficient information to admit or deny the allegations contained in Paragraph 59, and there deny the same.

13. These answering Defendants deny the allegations contained in Paragraphs 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59.

VI.

**THIRD CAUSE OF ACTION
(AGAINST ALL DEFENDANTS)
WRONGFUL DEATH**

14. In answer to Paragraph 60, these answering Defendants incorporate by reference each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 59 of Plaintiff's Complaint.

15. These answering Defendants deny the allegations contained in Paragraphs 61, 62, 63, 64, 65, and 66.

VII.

**FOURTH CAUSE OF ACTION
(AGAINST ALL DEFENDANTS)
SURVIVAL ACTION**

16. In answer to Paragraph 67, these answering Defendants incorporate by reference each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 66 of Plaintiff's Complaint.

17. These answering Defendants deny the allegations contained in Paragraphs 68, 69, 70, 71, and 72.

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VIII.

**FIFTH CAUSE OF ACTION
(AGAINST DEFENDANTS POLICE OFFICE M. CZAS AND DOES)
NEGLIGENCE**

18. In answer to Paragraph 73, these answering Defendants incorporate by reference each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 72 of Plaintiff's Complaint.

19. These answering Defendants admit the allegations contained in Paragraphs 74.

20. These answering Defendants deny the allegations contained in Paragraphs 75, 76,
77, and 78.

NEGLIGENCE

(AGAINST DEFENDANT LANDSDOWN AND CITY)

21. In answer to Paragraph 79, these answering Defendants incorporate by reference each and every admission, denial and allegation of their answer to all of Paragraphs 1 through 78 of Plaintiff's Complaint.

22. These answering Defendants deny the allegations contained in Paragraph 80, 81, 82, 83, and 84.

AFFIRMATIVE DEFENSES

As separate, distinct and affirmative defenses to the Complaint on file herein, and to each cause of action, these answering defendants allege as follows:

I

Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against these answering defendants.

II

Defendant, City of San Diego, its agents and employees, and the Defendant police officers acted in good faith and with a reasonable belief that his conduct was lawful and necessary

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III

Defendant, City of San Diego, is immune from liability in that a public entity is not liable for an injury arising out of its acts or omissions or of a public employee, in the absence of a statute declaring such liability.

IV

Defendant, City of San Diego, is not liable for an injury arising out of an act or omission of its employees, where the subject employee is immune from liability.

V

Defendant, City of San Diego, and its agents and employees are not liable for punitive damages.

VI

Defendant, City of San Diego, its agents and employees, and the Defendant police officers are not liable for injuries resulting from acts or omissions which were an exercise of discretion in the absence of a statute declaring such liability.

VII

Defendant, City of San Diego, its agents and employees, and the Defendant police officers are not liable while acting within the scope of their duties for injuries resulting from judicial or administrative proceedings.

VIII

Defendant, City of San Diego, its agents and employees, and the Defendant police officers are not liable for the execution or enforcement of the California Penal Code where due care is exercised.

IX

Defendant, City of San Diego, its agents and employees, and the Defendant police officers are not liable for violation of the plaintiffs' civil rights in that the alleged wrongful acts were not under color of any statute, ordinance, regulation, custom or usage of the City of San Diego.

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X

At the time of the contact, the Defendant police officers attempted to persuade the plaintiffs to follow directions and in doing so, only used force necessary for the occasion.

XI

Plaintiffs themselves were negligent in and about the matters alleged in the Complaint and said carelessness on their own part proximately contributed to the happening of the alleged incident, injuries and damages complained of, if any such exist.

XII

Defendant, City of San Diego, its agents and employees, and the Defendant police officers were at all times alleged in the Complaint performing duties required by law under conditions required by law.

XIII

Any and all acts of the defendant, City of San Diego, its agents and employees, and the Defendant police officers at or near the time alleged in the Complaint were reasonable and said defendants had reasonable cause to act in the manner they did.

XIV

At the time of the initial contact, the Defendant police officers were acting within the scope of their employment and had probable cause to believe the plaintiff was engaging in, or had just engaged in, a prohibited activity. During the contact, the Defendant police officers were acting within the scope of their employment and had probable cause to believe that said plaintiffs had committed a misdemeanor.

XV

Defendants acted reasonably and within the course and scope of their employment at all times, and is therefore entitled to qualified immunity.

WHEREFORE, these answering defendants pray judgment as follows:

1. Plaintiff take nothing by his Complaint;

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- 1 2. Defendants receive their costs of suit incurred herein; and
2 3. Such other relief as the court deems proper.

3 Dated: August 18, 2008

MICHAEL J. AGUIRRE, City Attorney

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5 By /s/ Andrew Jones
6 Andrew Jones
6 Deputy City Attorney

7 Attorneys for Defendant
8 City of San Diego, Police Chief William
8 Lansdown; and Officer M. Czas

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

OCIE HENDERSON, the Administrator of the
Estate of RAMEL HENDERSON

Case No.: 08cv1491 JLS (JMA)

(SDSC Case No. 37-2008-86047-CU-PO-CTL)

Plaintiffs,

v

DECLARATION OF SERVICE

CITY OF SAN DIEGO; POLICE CHIEF WILLIAM LANSDOWN; POLICE OFFICER M. CZAS and DOES 1 through 50, inclusive, all individually and in their official capacities, as agents or employees, of the CITY OF SAN DIEGO.

Defendants.

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the individuals on the service list attached hereto the following documents: **DEFENDANTS CITY OF SAN DIEGO, POLICE CHIEF WILLIAM LANSDOWNE AND OFFICER M. CZAS ANSWER TO PLAINTIFFS' COMPLAINT**, in the following manner:

- 1) By personally serving the individual named by personally delivering the copies to the offices of the addressee.

Time of delivery: _____ a.m./p.m.

- 2) By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing copies (first class mail, postage prepaid) to the person served at the place where the copies were left.

- 3) XX By placing a copy in a sealed envelope and placing it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices.

Ronnivashti Whitehead
Willoughby & Associates
200 Corporate Pointe Ste 495
Culver City, CA 90230
Fax: (310) 642-4710
Attorney for Plaintiff

Executed: August 18, 2008, at San Diego, California

CARMEN SANDOVAL